

ESTATE OF HARRY M. JOHNSON

IBIA 81-41

Decided June 3, 1982

Appeal from order, issued following rehearing by Administrative Law Judge Patricia McDonald, affirming prior determination of heirs in probate of intestate Indian trust estate. (IP GA187G 77.)

Affirmed.

1. Indian Probate: Evidence: Insufficiency of

The testimony of decedent's wife and legitimate children that they were unaware of the existence of an illegitimate child until after decedent's death was insufficient to support reversal of finding of paternity based in part upon census records and upon the testimony of appellee's mother.

APPEARANCES: Wilbert Tsosie, Esq., Shiprock, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On January 14, 1971, Harry M. Johnson died intestate leaving a surviving wife and four legitimate children, appellants here. On April 27, 1978, the Administrative Law Judge conducting the probate hearing of decedent's Indian trust estate entered an order finding that, in addition to appellants, decedent was survived by another daughter, appellee Harriet Johnson Frank.

Appellants sought a rehearing on the issue of appellee's paternity, reciting in their petition that they "left this area in 1955, and if Harry M. Johnson had a daughter, he would have told us. He worked for the railroad and always came home every March." In opposition to the rehearing petition, appellee filed an affidavit from her mother, Mary Frank Johnson, reciting, that "Mr. Johnson came to live with me when I was working in the Crownpoint area in December 1949. He left the following spring to work on the railroad and he never came back to see me again. My daughter was born on September 3, 1950."

A rehearing was held on April 16, 1981. At the hearing, appellee's mother testified that decedent was, in fact, the father of appellee. Appellants testified that they were never informed by decedent of the existence of another child, and had no knowledge of the existence of appellee until after decedent's death. They did not challenge the direct evidence of paternity offered by appellee.

An order confirming the order of April 27, 1978, which determined appellee to be a child of decedent, was entered on May 11, 1981. It is from this final order that appellants seek relief. Although appellants challenge the order determining heirs and offer to produce new proof to rebut appellee's showing of paternity, they have failed to specify the particulars of the proof they wish to offer, and have filed no briefs or other materials in support of their appeal.

The record on appeal as constituted is insufficient to require reversal of the April 27, 1978, order determining heirs. Appellee has offered direct evidence of paternity which is supported both by the circumstances of her birth and official documentary evidence compiled contemporaneously with the event. Appellants have failed to offer any evidence to challenge appellee's proof of paternity. (See Estate of Attocknie, 9 IBIA 249, 89 I.D. 193 (1982)).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge